

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1669 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No
5. Whether it is to be circulated to the Civil Judge? No :

KASAMBHAI JUMABHAI

Versus

POLICE STATION OFFICER

Appearance:

MR YN OZA for Petitioners

GOVERNMENT PLEADER for Respondent No. 1

MR JC SHETH for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/12/1999

ORAL JUDGEMENT

1. The prayer of the petitioner in this writ petition is for issuance of writ of mandamus directing the respondent No.1 to forthwith restore and return badges/licence of the petitioners unconditionally.

2. Brief facts are that the petitioners were working

as Porters (coolies) at Kalupur Railway station after obtaining licence from the respondent No.2 to work as such. In pursuance of the aforesaid licences the petitioner No.1 was given badge No.1763, the petitioner No.2 was given Badge No.1576 and the petitioner No.3 was given Badge No.1729. The petitioner No.1 was working as porter/coolie since last 8 years while the petitioner No.2 was working as porter/coolie since last 4 years and the petitioner No.3 was working as porter/coolie since last 9 years. It is alleged that in the night of 22.3.1988 police Constable Laljibhai caught them while they entered a compartment in Bombay bound Saurashtra Janata - 18 UP train with a view to put the luggages of the passengers in the train. The said constable had also threatened the passengers saying that these coolies should not be allowed to enter the compartment. Thereafter the said Police Constable deposited licences/Badges of the petitioners with the respondent No.1, Railway Police Station, Kalupur, Ahmedabad. In the absence of Badges/licence the petitioners could not carry on the work of coolies. This high handed action of the Police Constable, according to the petitioners, has violated the petitioners' fundamental right under Articles 19(1)(g) and 21 of the Constitution of India. It is, therefore, this petition.

3. The petition was admitted on 4.4.1988. Notice of admission was issued. Shri J.C.Sheth, learned Advocate was to appear on behalf of the respondent No.2, whereas learned A.G.P. on behalf of the respondent No.1. It is sorry state of affairs that till 12.45 p.m., list was revised thrice, but no A.G.P. is available nor Shri J.C.Sheth has reported to any of the three calls. No counter Affidavit has been filed though more than a decade has passed.

4. There are two aspects which are to be investigated in this petition. The first is whether the action of the police constable in forcibly snatching the badges/licences of the petitioners was justified and in accordance with law and whether the constable was justified in depositing the badges in the Railway police Station, Kalupur, Ahmedabad. The second aspect is whether the licences of the petitioners were ever cancelled after the incident dated 22.3.1988 by the respondent No.2. The incident of the aforesaid night, as indicated in the petition, does not involve any such act of the petitioners for which their badges could be taken away. If Counter Affidavit would have been filed by the Railway Administration or by the respondent No.1, it could have been seen what was the nature of the incident

which justified the police constable Lalji to forcibly snatch away the badges of the petitioners. Likewise in the absence of counter affidavit from the Railway establishment of western Railway, Vadodara, it cannot be said or presumed that the licences of the petitioners have been cancelled and that too after affording any opportunity of hearing to the petitioners. Consequently in the absence of counter Affidavit from the respondents, their actions cannot be said to be justified. It can hardly be said to be justified action of the Police Constable named above to snatch away the badges of the petitioners and deposit the same with the police authorities of the Railway Police Station. There is nothing on record to show that the Railway Police brought it to the notice of the Railway Administration, represented by the respondent No.2, that the licences of the petitioners be cancelled. Likewise there is nothing on record to show that the respondent No.2 had cancelled the licences of the petitioners. As such, action of the constable in forcibly snatching the badges of the petitioners is illegal and to that extent only partial relief can be granted in this petition.

5. The petition, therefore, succeeds in part only.

It is hereby directed that the respondent No.1 shall hand over the three badges whose numbers have been given in the foregoing portion of this Judgment to the petitioners within a period of two weeks from the receipt of copy of this order. No order as to costs.

sd/-

Date : December 10, 1999 (D. C. Srivastava, J.)

sas